

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>VIRGINIA BATSELL</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 214,108
<b>BROOKSIDE MANOR</b>	)	
Respondent	)	
Self-Insured	)	

**ORDER**

Respondent appeals from the preliminary hearing Order of Administrative Law Judge Floyd V. Palmer dated June 12, 1997, wherein the Administrative Law Judge granted claimant benefits in the form of temporary total disability compensation and ongoing medical care, finding that claimant's increased symptomatology at Southgate Manor was not an intervening injury and awarding claimant temporary total disability compensation against the respondent.

**ISSUES**

- (1) Whether claimant suffered an intervening injury while employed with Southgate Manor.
- (2) Claimant's entitlement to temporary total disability compensation commencing May 26, 1996, for 15.57 weeks.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing and considering the entire record, the Appeals Board finds, for preliminary hearing purposes, as follows:

The issue dealing with the award of temporary total disability compensation is not listed in either K.S.A. 1996 Supp. 44-534a or K.S.A. 1996 Supp. 44-551 as granting jurisdiction to the Appeals Board to review from a preliminary hearing order. K.S.A. 1996 Supp. 44-534a grants the Administrative Law Judge specific authority to award either

temporary total disability compensation and/or medical treatment from an accidental injury. As such, the issue dealing with the award of temporary total disability compensation will not be considered for the purpose of this appeal.

Whether claimant suffered an intervening injury at Southgate Manor raises an issue of whether claimant suffered an injury by accident arising out of and in the course of her employment and constitutes an appealable issue from a preliminary hearing. See Tharp v. K. C. Gunite, Docket No. 187,952 (Sept. 1996). The Appeals Board finds the Order of the Administrative Law Judge should be affirmed.

Claimant suffered an accidental injury on May 25, 1996, while employed with respondent. She had, shortly before, provided her notice of intent to terminate her employment with respondent. After receiving medical treatment claimant received a light duty return to work from the doctor but claimant failed to advise respondent of this until approximately the 6th of June 1996. At that time respondent failed to return claimant to work in a light-duty capacity. On August 23, 1996, claimant began work at Southgate Manor as a CNA. The first day at Southgate, claimant's symptomatology worsened to the point where she could not return to work the next day. The Administrative Law Judge awarded temporary total disability compensation beginning May 26, 1996, and continuing past claimant's one day at Southgate. Respondent objected alleging the one day at work, with increased symptomatology at Southgate, constituted an intervening injury and claimant should not be entitled to temporary total disability compensation for that injury from the May 26, 1996, date of accident.

The Appeals Board finds, after reviewing the evidence, that the incident at Southgate, rather than being an intervening injury, was merely a temporary flare up of claimant's symptomatology stemming from the original injury rather than a new and distinct accident. As such it is a reasonable and natural consequence of the original injury.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that, for preliminary hearing purposes, the Order of Administrative Law Judge Floyd V. Palmer dated June 12, 1997, should be, and is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of August 1997.

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BOARD MEMBER

c: John J. Bryan, Topeka, KS  
Kip A. Kubin, Overland Park, KS  
Floyd V. Palmer, Administrative Law Judge  
Philip S. Harness, Director